

Delaware Administrative Law Review Task Force  
November 15, 2017  
9:00 a.m.  
Tatnall Building 150 Martin Luther King Jr. Blvd. South Dover, DE 19901

MEETING MINUTES

Task Force Members Present: T. McGonigle, R. Forsten, D. Gibbs, A. Goldstein, D. Atkins, D. Mangler, M. Dunkle, and State Senator B. Townsend.

Absent: Justice Seitz, M. Houghton, J. Adkins, Representative Mitchell, and Professor K. Kristl.

Public Present: None

Call to Order

Thomas McGonigle called the meeting of the Delaware Administrative Law Review Task Force to order at 9:05 A.M.

Approval of Minutes from September 8, 2017: Motion to approve minutes made by R. Forsten, seconded by A. Goldstein and approved 8-0.

State Regulatory Subcommittee – Review Comments

T. McGonigle reported that the subcommittee has gathered case load information via the Attorney General's Office and Administrative Office of the Courts. Based on the review of the data on appeals to the various courts, the subcommittee concluded that a more detailed weighted case load study is not necessary. AOC reports 25 such appeals in the Court of Chancery over a 12 year period, 32 in CCP over a six year period and 119 in Superior Court over a six year period. While this data has not been fully analyzed by the AOC, it comports with the analysis from the AG's Office and the Committee does not feel the data warrants a time-consuming case load study at this time.

T. McGonigle reported that the subcommittee is not recommended any jurisdictional changes at this time with respect to the courts where these appeals are heard but recognizes the subcommittee on land use and real property may suggest such changes. In addition, T. McGonigle indicated he will contact Dave McBride and Judge Ableman who chair the jurisdictional committee established by the Supreme Court to inquire as to whether their committee is making any recommendations that might impact this analysis.

T. McGonigle reported that based on the analysis from the AG's Office, the subcommittee is suggesting that the proposed ALJ type system not initially include cases involving workers compensation, unemployment and DHSS benefits cases. The reason for this is the significant volume of these cases and the difficulty of a new unit to absorb such volume without disruption. D. Atkins expressed concern, particularly with respect to the DHSS benefits cases, indicating he believes these decisions are at times inconsistent and the subject of multiple reversals and remands. D. Atkins stated he believed the ALJ system as contemplated may significantly improve the process for these cases. T. McGonigle agreed the task force should consider including these case but requested D. Atkins to review the issue further with

some of the attorneys handling these cases and to report back to the task force. There was also discussion concerning workers compensation and unemployment cases and the general consensus was these cases do not need to be included in the ALJ system at this time. Finally, there was some discussion concerning cases before the Department of Insurance and while the inclination of the subcommittee is to include these cases, T. McGonigle agreed to discuss the issue further with M. Houghton given his extensive experience with DOI.

Mr. McGonigle reported there has been discussion with and among the Administration about the proposed construct of having a separate entity within the DOS that houses and manages the ALJs as contemplated under the draft legislation. D. Gibbs reported that those discussions are ongoing and with some of the parameters established as suggested above, analysis of the budget implications of this proposal has begun. D. Mangler reported on the experiences with the Division of Professional Regulation when it transitioned to a centralized hearing officer process and the corresponding reduction in the backlog of caseload. Senator Townsend expressed a desire to have the budget issues resolved before the legislation is introduced and Task Force agreed with that suggestion. A. Goldstein raised the issue of resources in the context of changing the procedures around these hearings, making the point that the Task Force needs to also consider that changes in the process may have the effect of requiring more resources to handle these cases. For example, if discovery is significantly broadened, it will impact the time and effort it takes to process these cases, likely requiring additional resources. Members of task force agreed this is an issue that must be considered as it contemplates procedural changes to the APA.

#### Subcommittee on Land Use and Real Property – Review Status:

R. Forsten reported that the subcommittee is reviewing the various avenues of appeal from land use decisions, as well as the standards for such decisions. R. Forsten reported that it is likely the subcommittee will make recommendations to require all such appeals be filed in Superior Court. Currently, most appeals go to the Superior Court but there is a small subset that are heard in the Court of Chancery. The subcommittee will also likely suggest minimum standards for written decisions at the local land use level, as well as simplify the pathways for appeal. R. Forsten believes these changes will provide needed clarity around the process and result in efficiencies.

M. Dunkle suggested there may be a role for ALJs in the context of some land use decisions having to do with variances from building codes and the like.

D. Atkins suggested in the context of the landlord tenant area, the subcommittee may recommend an appeal to the Superior Court to ensure that a law trained judge is available for these important cases and to also better establish binding precedent.

T. McGonigle requested that with respect to any recommendations the subcommittee might have that will impact the duties and responsibilities of the ALJs or the courts, it will be important for such recommendations to be brought forth in time to be considered in the context of the resource issues that are being working on.

### Draft APA Legislation- Review Comments

T. McGonigle reported he has not received any comments from Task Force members on the draft legislation with one exception. T. Professor Kristl provided some initial comments as it relates to the need to cross reference or amend competing statutory provisions contained in the enabling legislation of the agencies to be effected by the proposed ALJ system. The Task Force agrees that once we have resolved the issue of the agencies that will be included within the new ALJ system, we will need to review and possibly amend the enabling legislation of those agencies to the extent there are inconsistencies.

The Task Force agreed to set a deadline of December 1st for comments on the draft legislation, with such comments to be sent to T. McGonigle and R. Forsten. The comments received will be categorized in one document for review, consideration and hopefully resolution at the next meeting of the Task Force.

### Schedule Upcoming Meetings

Next task force meeting scheduled for December 15, 2017 at 1:00 p.m. meeting in Dover. The meeting will be held at the Tatnall Building, subject to confirmation of its availability.

### Public Comment

None

There being no further business, the meeting adjourned at 10:50 A.M.

 - Chair